

S
174.4
T6es
2001



Ethical Standards

A Self-Study Course

STATE DOCUMENTS COLLECTION

11/12/2002

MONTANA STATE LIBRARY
1515 E. 6th AVE
HELENA, MONTANA 59601

MONTANA STATE LIBRARY



Montana Department of Transportation

MONTANA STATE LIBRARY



3 0864 0015 2487 8

Acknowledgements

The Organizational Development Bureau of the Montana Department of Transportation thanks the Washington State Department of Transportation for permission to utilize materials contained in their ethics manual. We wish to acknowledge and thank Steve Garrison for the time and legal expertise he contributed to this project.



Montana Department of Transportation

2701 Prospect Avenue
PO Box 201001
Helena MT 59620-1001

David A. Galt, Director

Judy Martz, Governor

January 11, 2001

Welcome!

As Director of the Department of Transportation, I would like to take this opportunity to explain why the Department has decided to provide ethics training for MDT employees.

If a private company employed you, your boss (the manager or owner of the company) would tell you what standards of conduct he/she expects of you as his/her employee. From the day you started work, you would know the "do's and don'ts of the job."

As a state employee, the taxpayers of Montana employ you. They expect a day's work for a day's pay, and they also have standards of conduct they expect you to abide by. The standards of conduct are written into state laws. These laws aren't easily accessible and their meaning isn't always clear to the reader. That is why we have developed this course. We want you to know the "do's and don'ts of your job."

These rules apply to each state employee and public servant. As you proceed through the course, if you have questions, please ask the instructor for clarification.


David A. Galt, Director
Department of Transportation

Contents

	<u>Page</u>
Introduction	iii
Instructions	iv
Section I Introduction to Laws and Policies	1
Section II General & Basic Principles of the Law	5
Section III Gratuities and Gifts.....	9
Section IV Use of State Facilities or Property	17
Section V Conflicts of Interest.....	25
Section VI Post-state Employment	29
Section VII Political Campaigns and Lobbying	33
Section VIII Compensation for Outside Activities.....	37
Section IX Confidential Information vs. Public's "Right to Know"	39
Section X Nepotism	44
Section XI Penalties.....	47
Appendix A Terms and Definitions	49
Appendix B Montana Constitution	51
Appendix B-1 The Montana Codes Annotated.....	52
Appendix B-2 MDT Management Memos (policies).....	64
Appendix C Course Completion Document	65

INTRODUCTION

You are about to read the laws written to establish the standards of conduct for state employees. It's important for you to be aware that formal rules of conduct have been written for state employees. We all live by the same rules – from the new temporary employees all the way up to the Director of the Department. It's a pretty dry subject, but an important one.

Every employer expects to receive a day's work for a day's pay. The tax dollars of the people of Montana pay the salaries of state employees. When people see state employees working, they see their tax dollars at work. Every time a car passes by a construction site, or a citizen enters an MDT building, they observe employees' conduct and work ethics. You work in a highly visible work environment - a fish bowl.

There have been some problems in the past. Employees have been disciplined for accepting gratuities and inappropriate use of state property and equipment. These instances are not commonplace, but can create serious problems when they occur.

This manual provides scenarios that an MDT employee might encounter and describes appropriate responses. It also contains a copy of the laws and policies governing state employee conduct.

This manual will provide you with guidance in making good decisions should sensitive situations arise on the job. If you are faced with a situation on the job and are unsure of what response is expected of you, please contact the MDT legal services staff at the department headquarters at 444-6090.

Learning Objectives

Upon completion of this course, participants will be able to:

- 1. Identify basic and general principles governing ethical standards for MDT employees.**
- 2. Recognize the basic ethical concepts in all eleven sections of this course.**
- 3. Given a scenario, participants will be able to distinguish between both ethical and non-ethical behaviors performed by the characters in the scenarios.**

Participant Instructions and Manual Format

This is a self-study, programmed text course. You may take on-the-job time to complete it. The program is divided into eleven sections; each section covers an aspect of the ethics law. Each section is broken into subsections.

- ⇒ **Terminology** - If new terminology is introduced in a section, the definition will be included at the beginning of the section. Terms that are defined, will be italicized in the text of that section.
- ⇒ **The law** – This subsection introduces the basic principles of the law.
- ⇒ **Discussion/query** – This subsection reviews and discusses the law(s) and requests feedback for learning with one of three types of questions (completion statements, matching, multiple choice).
- ⇒ **Application** – This subsection introduces one or more scenarios, asks the reader to determine if an ethical violation is being committed. The learner selects the most correct response and turns to the page indicated after the response selected and follows the directions.

Types of Questions:

1. Completion statements (fill in the blank).

For example:

Query – A gift is anything a state employee, neither paid for or otherwise earned of economic value.

Student response - Put your answers in the blanks.

2. Multiple choice (circle the letter of the most correct response to the multiple choice question).

For example:

Query – Which of the following items is not considered a gift for a MDT employee?

- A. An item of less than \$100 value.
- B. Expenses incurred for giving a speech.
- C** An item donated to charity.

Student response – Circle the letter by the correct response (C).

3. **Matching questions** (Match the concept or principle in Column A with the Term in Column B).

For example:

A	B
1. A fee paid for a speech.	A. Conflict of Interest
2. A supervisor overlooks a use of state resources for political purposes.	B. Honoraria
3. Restrictions on post-state employment.	C. One-Year Rule
4. Accepting a position with a company the employee participates in regulating.	D. Acquiesce

Student response – Place the correct letter of the answers in column B in the blank preceding the numbered questions in column A.

Answers: The expected responses to a query are provided at the top of the page following the query.

Application Example:

Scenario: Melvin is an auditor for a state agency that does financial audits of businesses. Melvin also has a part-time job in the public relations department of the XYZ Corporation. Melvin's job with XYZ is unrelated to his official duties. The agency assigns Melvin to audit XYZ because he is an employee of XYZ and knows the XYZ company very well.

Question: Is Melvin committing an ethical violation?

(Select the most correct answer and turn to the page indicated)

Choices:

- A. **Yes**, Melvin is committing an ethical violation. Auditing a business he is employed by is a conflict of interest. (Turn to page XX)
- B. **No**, Melvin is not committing an ethical violation because his part-time job is **not** related to his official duties. (Turn to page YY)
- C. **No**, Melvin is **not** committing an ethical violation, but the agency he works for is committing an ethical violation. (Turn to page ZZ)
(Turn the page and check responses.)

The page following the response tells the reader whether or not a correct or incorrect response was selected and provides instructions for reviewing and re-testing.

For example:

Your response is:

B. **No**, Melvin is **not** committing an ethical violation because his part-time job is not related to his official duties.

Answer:

Sorry, this is not the expected response.

Instructions:

Please review information on page XX; then turn to page YY to select another response.

Completion of Course:

Upon completion of the course the employee should return the standard Course Evaluation Questionnaire (obtain from your supervisor) and the Course Completion documentation sheet in the back of the book to their supervisor. You may keep the completed course manual for future reference. The supervisor's completed portion of the Course Completion sheet verifies the completion of the course. The Organizational Development Bureau will use the Course Completion sheet to update each participant's training history and the Course Evaluation Questionnaire to make modifications and update the course.

Appendices:

When introducing a new concept, new terminology is introduced prior to the introduction of the concept. Appendix A is a compilation of the definitions of terms used in the course. Appendix B contains the Montana Constitution, Appendix B-1 contains applicable state statutes and Appendix B-2 contains applicable department policies.

Section I Introduction to Laws and MDT Policies

Terminology:

Conflict of Interest	Actions construed to be in the interest of the employee and not in the public's best interest.
Crime	Violation of law punishable by jail time and/or fines.
Felony	A major crime with a serious punishment such as imprisonment or death.
Laws	Rules of conduct established and enforced by the authority, legislation or custom of a given community or group.
MCA	Abbreviation for Montana Codes Annotated (the laws enacted by the Montana Legislature).
Misdemeanor	A minor offense or breaking of a municipal ordinance for which states provide a lesser punishment than for a felony.
Pecuniary	Something with a monetary value.
Statute	A law passed by the Legislature and contained in the MCA.

Discussion:

Montana *laws* are actions passed by the Legislature or initiatives enacted into law by the popular vote of the people. The laws (*statutes*) are grouped by content and are numbered and published in volumes known as the Montana Code Annotated (abbreviated as “*MCA*” or commonly referred to as “the statutes”).

A state employee is expected to act in the public’s best interest and to avoid situations where his personal interests may conflict with the public’s best interest. The Legislature identified certain situations that may be construed to be in the best interest of one individual (state employee, legislator and public officials) and not in the best interest of the general public and wrote laws to prevent such situations. These situations are known as “*conflicts of interest*.”

The laws addressing conflicts of interest are found in Title 2, Chapter 2 of the MCA and are known as the Code of Ethics (also referred to as “the Code”). A violation of these laws is not a criminal offense except violation of 2-2-121, MCA which is a *misdemeanor* and has criminal penalties. Violations of the Code may

not involve criminal penalties but may result in disciplinary action that may include termination of employment with the state.

Some laws define acts that are seen as criminal behavior (*crimes*) and the laws also outline the penalties for such behaviors. An example of a criminal law that could impact an MDT employee is 45-7-104 (1), MCA:

45-7-104(1) No public servant in any department or agency exercising regulatory function, conducting inspections or investigations, carrying on a civil or criminal litigation on behalf of the government, ... shall solicit, accept, or agree to accept any **pecuniary benefit from a person known to be subject to such regulation, inspection, investigation, or custody or against whom such litigation is known to be pending or contemplated.**

Why have a Code of Ethics?

1. Article XII, Section 4 of the Montana Constitution requires that "the legislature provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.
2. The laws outline the expected behavior of public employees.
3. Actions of MDT employees generally prohibited by the Code of Ethics (paraphrased):
 - Disclosure or use of confidential information to further one's own economic interests;
 - Accepting a gift of substantial value or a substantial economic benefit tantamount to a gift;
 - Receiving salaries from two public employment positions, or a position and a public contract that overlap for hours being paid;
 - Having a business that may be directly and substantially benefited by action taken by MDT;
 - Obtaining employment which conflicts with one's state job;
 - Using public time, facilities, equipment, supplies, etc. for one's own use;
 - Engaging in a financial transaction for one's own business with someone (company or individual) that one inspects or supervises in one's state job;

- Helping someone for compensation or pay in getting a contract or other benefit from MDT;
- Doing an official act that benefits one's business; and
- Lobbying on behalf of an organization of which one is a member while doing one's job.

The "Code of Ethics" for Montana public employees is found in the Montana Codes Annotated (abbreviated MCA), Title 2, Chapter 2. **The Code of Ethics is included in the Appendix B-1 of this manual.** The Code of Ethics includes guidelines for conduct of public officials, legislators and public employees.

Query: (Match the following.)

<input type="checkbox"/>	Code of Ethics	a) Montana Codes Annotated, books containing all of the laws of Montana.
<input type="checkbox"/>	Criminal Behavior	b) Laws written to prevent conflict of interest in the actions of public employees.
<input type="checkbox"/>	Pecuniary	c) Having monetary value or worth.
<input type="checkbox"/>	MCA	d) The act of committing serious crimes with more severe punishment - most often include fines and/or jail time.

(Turn the page and check responses.)

Expected Responses Are:

- (b) Code of Ethics
- (d) Criminal Behavior
- (c) Pecuniary Value
- (a) MCA

**(If your responses are correct continue.
If not, reread discussion, correct
responses, then continue.)**

(You have completed Section I - proceed to Section II)

Section II General and Basic Principles of the Law

The Law – Three Basic Principles (Title 2, Chapter 2, MCA)

Basic Principle One – Activities Incompatible With Public Duties.

State employees may not have an interest (financial or otherwise; direct or indirect) or engage in a business or transaction or professional activity that is in conflict with the proper discharge of their official **duties**. (Refer to Section 2-2-105, MCA)

Basic Principle Two – Special Privileges. Outside the scope of employment, state employees may not use their position to secure special privileges or exemptions for themselves, or their spouse, child, parents, or other persons. (Refer to Section 2-2-104, MCA)

Basic Principle Three – Compensation for Official Duties. State employees may not, directly or indirectly, ask for or give or receive or agree to receive any **compensation**, gift, reward or gratuity from a source except the state of Montana for performing, omitting, or deferring the performance of any official **duty**, unless otherwise authorized by law. (Refer to Section 2-2-104, MCA, and Section 2-2-101, MCA)

Discussion:

The government derives its power from the people. Ethics in government are the foundation on which the structure of government rests. State employees hold a public trust that obligates them, in a special way, to honesty and integrity in fulfilling the responsibilities to which they are elected or appointed. Most important in that trust is the principle that public office, whether elected or appointed, may **not** be used for **personal** gain or **private** advantage.

Query:

- A. State employees may **not** be engaged, directly or indirectly, in any activity that is in _____ with their official _____.
- B. State employees may **not** use their position to obtain, for themselves or anyone else, special _____ or _____.
- C. This section establishes the basic ethical concept that state employees are paid a salary by the state and may **not** receive, from any other source(s), any _____ for performance/non-performance of any official _____.

(Turn page and check responses.)

Expected Responses Are:

- A. *conflict* and *duties*
- B. *privileges* and *exemptions*
- C. *compensation* and *duty*

(If your responses are correct continue.
If not, correct responses, then continue.)

Application:

Debbie is a retired federal employee who recently started a training company that provides training programs in personnel management and dispute resolution. Debbie is seeking to provide training for state employees. Debbie's brother Bill works for the MDT Organizational Development Bureau that reviews contracts for training within MDT. Bill gives Debbie a list of the training programs the state is seeking to contract. Additionally, Bill informs Debbie which training programs typically receive high bids and the fewest number of bids, confidential information on some of the bids that were submitted early, and advice on how she might submit the lowest bid.



Query: Is Debbie committing an ethical violation?

(Select the most correct response and turn the page.)

Choices:

- A. **Yes**, Debbie is committing an ethical violation. She took an unfair advantage **not** available to other training contractors by accepting information on contracts from Bill.
- B. **No**, Debbie is **not** committing an ethical violation, but Bill is because he is using his position to provide Debbie privileged information.
- C. **No**, Debbie is **not** committing an ethical violation. One needs all the help one can get in this dog eat dog world. She's lucky to have a brother like Bill! Bill is not committing an ethical violation because he will not receive any financial or other gain and is not involved in providing the training.

Your response is:

- A. Sorry**, this is not the expected response. Please review the information on page 5 before proceeding to Section III.
- B. Congratulations!** This is the expected response. Since Debbie is **not** a state employee she is **not** subject to state ethics laws. Her brother Bill, however, is subject to state ethics laws and is committing an ethical violation by providing confidential contract information to Debbie. This is a violation, even if Debbie is **not** related to Bill. Providing confidential information to **any** person to give them an unfair advantage over the general public is a violation.
- C. Sorry**, this is not the expected response. Please turn to page 5 to review the information before proceeding to Section III.

(You have completed Section II - Proceed to Section III)

Section III Gratuities/Gifts

Terminology:

Gift	Anything with “ <i>pecuniary</i> ” value or benefit.
Gratuity	A gratuity is something given by someone (a contractor for example) without payment by the recipient in return for services, favors or benefits.
Pecuniary	Something with monetary value.

The Law – Basic Principles Related to Receiving Gifts

Basic Principle One – An MDT employee whose duties pertain to contracts, purchases, payments, claims or other government transactions may not solicit or accept any *gifts*, items or *gratuities* from any person, firm or corporation subject to the employee’s duties. (refer to Section 2-2-104, MCA).

Basic Principle Two – An MDT employee whose duties include the regulation, testing, inspection or investigation of any person, firm or corporation is prohibited from soliciting or accepting any gifts, items or gratuities from any entity (person, business, group, etc) which is the subject of those duties. (Refer to Section 45-7-104 (1), MCA)

Basic Principle Three – Department employees whose duties are not addressed in paragraphs 1 or 2 of this policy may not accept any gift or contribution from persons, firms, or corporations which violate the Code of Ethics established in Title 2, Chapter 2, part 1 of the Montana Codes Annotated. (Refer to Department Policy established through Management Memo Number 00-02 see Appendix B-2)

Discussion:

The Code of Ethics Law and Department Management Memo 00-02 prohibit the receipt of gifts or gratuities that might influence the performance of an employee’s official duties.

MDT personnel inspecting or supervising a contractor’s work may not accept anything from the contractor. In the past, gifts have been offered to MDT employees articles of clothing (caps, jackets, etc), Christmas turkeys, meals, drinks, discounts on paving personal driveways, etc. State personnel cannot accept any of these items nor any other items or services offered by anyone we regulate.

For example, MDT Civil Rights Bureau employees supervise the work of firms working on MDT projects to ensure compliance with federal employment regulations (for example, ADA, EEO and DBE requirements). These employees are prohibited from accepting gifts from the contractors and could be prosecuted for criminal violations under 45-7-104, MCA if they did accept gifts.

Supervisors bear a level of responsibility for ethics violations by their employees. If a supervisor either approves a misuse of state property or resources, knowing that it's improper or if he/she deliberately avoids getting details about a proposed use and making the determination whether the use is proper or improper, he/she is subject to the Department's disciplinary policy for violations of Department policy and/or statutes. Supervisors may not blindly approve use of facilities or property without having knowledge of how it will be used, nor purposely "look the other way" to what is happening around them.

If an MDT employee is offered a gift from a group or other entity, such as a business or civic organization or a tribal community as a cultural exchange or in recognition of service by the group or tribe, the employee may accept the gift on behalf of the Department. The gift becomes the permanent property of the Department (state) and will be relinquished to the District Administrator or Department Director who shall determine an appropriate place to keep and/or display the gift. This does not prohibit an employee from accepting a public service award (reference Section 2-2-102 (3)(b)(iv), MCA).

Query (fill in the blank):

1. State employees may **not** accept or solicit any _____ or _____ from any person, firm or corporation subject to the employee's duties as a _____ employee.
2. If the state employee's official duties do **not** include any regulation, inspection, investigation of highway contractors work, or if the state employee does not perform functions of a discretionary nature pertaining to contracts, purchases, payments, claims or other government transactions is he/she allowed to accept gifts from highway construction contractors? (yes or no) _____

(Turn the page and check responses.)

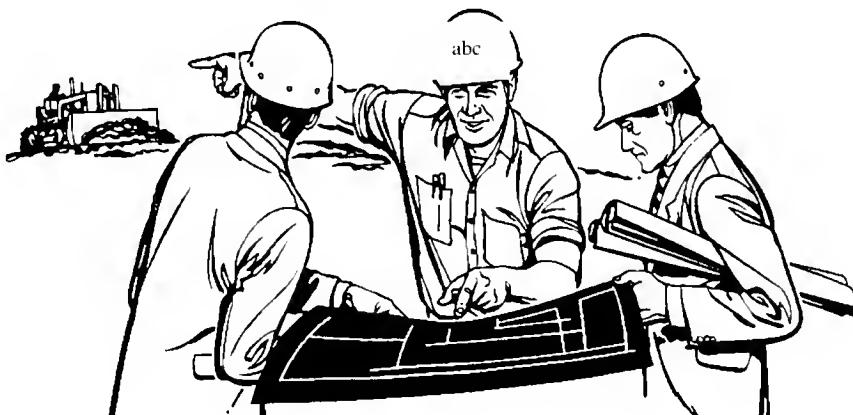
Expected responses:

1. gifts or gratuities;
state or Montana Department of Transportation
2. no (see Management Memo 00-02)

(If your responses are correct, continue.
If not, please review page 9, correct responses, then
continue.)

Application:

Harvey, an MDT employee, is inspecting a construction project. He is wearing a hat on the project with ABC Excavation firm name and logo on it. The current construction project is under contract with George's Dirt Works.



Query: Is Harvey committing a violation of the Code of Ethics or Department Policy by wearing the ABC contractor's hat?

(Select the most correct answer and turn the page.)

Choices:

- A. **No**, Harvey can wear whatever hat he wants on and off the job.
- B. **No**, the hat doesn't have a real value so it's not an ethical violation.
- C. **Yes**, it's an ethical violation. Harvey accepted a gift (the hat) from ABC Excavating.
- D. Not enough information given to know.



Your response is:

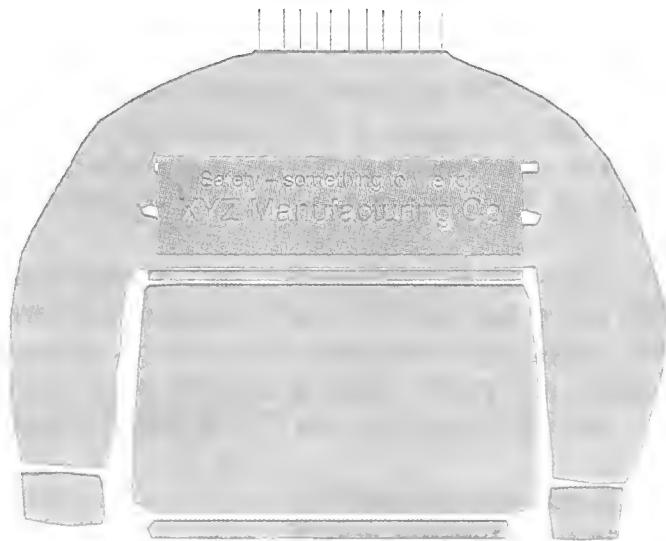
- A. Sorry**, this is not the expected response. If the company ABC Excavating gave Harvey the hat on a previous job, it was unethical for Harvey to have accepted the hat. The hat is a gift and Harvey's official duties include inspection and regulation of companies that contract with the Department (directly or indirectly).
- B. Sorry**, this is not the expected response. Accepting a gift regardless of the value is a violation of MDT policy (Appendix B-2) and is considered unethical.
- C. Sorry**, this is not the expected response. While it may be an ethical violation, not enough information is provided to determine whether Harvey received the hat while working for the Department.
- D. Congratulations!** Not enough information is provided. Harvey may have purchased the hat at a garage sale or his brother-in-law may own the company. However, wearing the hat on the job is not good professional judgment because the current contractor and the public may question Harvey's ability to perform his duties in an unbiased manner.

Logo emblazoned cups, hats and jackets are items companies use to promote their products or services. The public and competing companies may question why Harvey is promoting the ABC Excavating Company. The Department of Transportation has available for purchase hats, shirts and other items of clothing with the MDT logo. "Wear the items with pride." The Department encourages you to promote your status and role on the highway project as a state employee. You represent the people of Montana whose taxes are paying for the roads the Department builds.

**(If your responses are correct, continue.
If not reread the Laws and Discussion
on pages 9 & 10, and then continue.)**

Application:

Mary works in the MDT office responsible for worker safety. As part of her job, she accompanies a group of agency employees on a training program that includes a tour of a manufacturing plant of the XYZ Corporation. The plant manufactures safety products. At the conclusion of the tour the XYZ Corporation gives Mary a jacket with a safety logo on the back valued at \$75 as a souvenir of her tour. Mary accepts the jacket. Mary does **not** participate in the regulation of XYZ because none of her official duties involve the corporation.



Query: Is Mary committing an ethical violation by accepting the jacket?

(Select the most correct answer and turn the page.)

Choices:

- A. **Yes**, Mary is committing an ethical violation because the jacket is clearly intended to influence.
- B. **No**, Mary is **not** committing an ethical violation because she **isn't** participating in the regulation of XYZ corporation.
- C. **Yes**, Mary is committing an ethical violation because the gift is over \$50 in value.

Your response is:

- A. Sorry,** this is **not** the expected response. Mary is committing an ethical violation, but **not** because the gift is clearly intended to influence. Mary does not participate in the regulation of company XYZ.
- B. Sorry.** this is **not** the expected response. Mary is committing an ethical violation. Even though it could **not** reasonably be expected that the gift of the jacket would influence the performance of Mary's official duties, there is an ethical violation because MDT employees are forbidden to accept gifts.

An ethical violation occurred, because MDT policy forbids employees to accept gifts that violate Title 2, chapter 2, part 1 of the MCA (gifts exceeding the value of \$50.00) and according to MDT policy an MDT employee must decline all gifts regardless of the value.

- C. Congratulations!** This is the expected response. Mary committed an ethical violation because the jacket has value and MDT employees are not allowed to accept gifts regardless of the value. In addition to the violation of Title 2, chapter 2, part 1, Mary has violated MDT Management Memo 00-02 and can be disciplined.

**(If your responses are correct, continue.
If not, correct responses, then continue.)**

Application:

Betty is an MDT employee and her job involves negotiating and approving contracts. Sue is an administrative assistant who answers Betty's telephone. Betty has been negotiating to buy a large quantity of computers for the MDT District offices from the ABC Corporation. During the course of the negotiations, Sue has become familiar with representatives of ABC who have called to speak with Betty about the contract. After Betty approves the contract, ABC sends Betty and Sue each a large bouquet of flowers valued at \$45. Betty and Sue both accept the flowers.



Query: Are Betty and Sue committing an ethical violation?

(Select the most correct answer and turn the page.)

Choices:

- A. **Yes**, Betty and Sue are committing a violation of MDT policy because the flowers have value and Department policy forbids acceptance of gifts.
- B. **No**, the value of the flowers is less than \$50, which means it isn't a "gift of substantial value" as defined in Title 2, Chapter 2, part 1 of the MCA.
- C. **Yes**, Betty is committing an ethical violation, but Sue is **not**. Betty is subject to Basic Principle One, but Sue is **not** and may legally accept the flowers **no** matter what the cost.

Your Response Is:

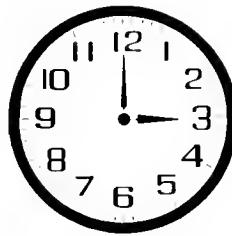
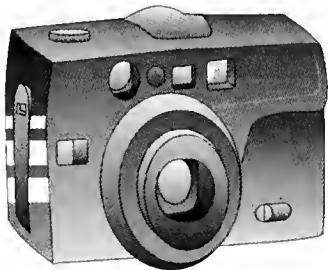
- A. Congratulations!** This is the expected response. Betty and Sue violated MDT policy by accepting a gift that could lead to disciplinary action.
- B. Sorry,** this is not the expected response. While Section 2-2-102 defines a gift of greater than \$50 as being of "substantial value," Department policy does not allow the acceptance of the gift even though it is less than \$50 in value.
- C. Sorry,** this is not the expected response. Betty would be in violation of Basic Principle One and Three; Sue is in violation of Basic Principle Three.

(You have completed Section III - proceed to Section IV)

Section IV Use of State Facilities or Property

The Law –

Rules of Conduct for State Employees. 2-2-121(2), MCA states a public employee may not use public time, facilities, equipment, supplies, personnel, or funds for the employee's **private business purposes**.



Discussion:

This section prohibits a state employee from using people, money, or property under their control, direction or custody for their private benefit or gain or that of another.

"Public time" would include a state employee's routine work hours and any time that he/she is officially representing the state agency. "Facilities, equipment, and supplies" include the state buildings, the equipment and supplies therein and any equipment or supplies purchased for use in an official capacity off site (for example at a construction site). The use of the items listed under 2-2-121, (2), MCA for an individual's personal benefit is an ethical violation.

Public property is bought or provided for the benefit of the public in general. **State property is purchased to conduct state business**, not to help out an individual state employee meet his personal needs. Can a person come into a state agency and borrow a state owned vehicle to drive across the state to visit his friends? No, of course he cannot. A state employee cannot borrow a vehicle to visit his friends, a chain saw to cut firewood at home, nor a transit to site in a new garage foundation.

Query (fill in the blank with true or false):

- A. _____ A state employee can use or allow others to use state property as long as they return it in good working condition or use it for a non-profit organization's benefit.
- B. _____ A person can use state equipment in their off-duty hours as long as they don't take it home.
- C. _____ If an employee uses state property and his supervisor knows it is happening, the supervisor is not at fault.

(Turn page and check responses.)

Expected responses:

A. False

B. False

C. False

**(If your responses are correct, continue.
If not, please read page 17, correct responses, then
continue.)**

Application:

Mary, a state employee, has completed the work project that she has been assigned. Since it's only 15 minutes until lunch, she decides to write a quick letter on the computer to her cousin so she can mail it on her lunch break.



Query (fill in the blank):

A. Is Mary committing an ethical violation? _____ (yes or no)

B. Mary is using _____, _____, and _____ that belong to the state.

(Turn page and check responses.)

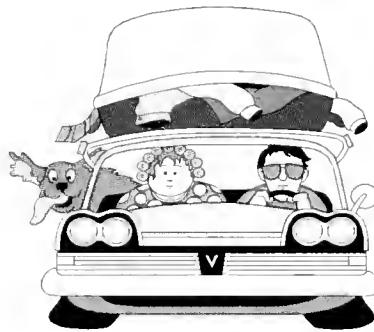
Expected responses are:

- A. Yes**
- B. public time, facilities and supplies**

Mary is writing the letter during her normal work hours (public time). She is using state property (the computer) and state supplies (paper) to complete the letter.

Application:

During the big snowstorm last winter, Bill's car needed some repairs. Bill was taking his vacation to go skiing in Colorado and wanted the car repaired before he left on his vacation. Bill knew how to do the work, but he didn't have the necessary tools or a warm place to work on the car. Bill is employed by the MDT and works in the maintenance shop. The MDT shop had all of the tools he needed to do the repairs. His supervisor said it was ok to come in on the weekend and so Bill brought his car in on Saturday and repaired it.



Query: Did Bill commit an ethical violation?

(Select the most correct response and turn the page.)

Choices:

- A. No, the MDT facility and tools weren't being used and it wasn't during work hours, so there was no problem in using them.**
- B. No, the State didn't lose anything by his use of the facilities, so there was "no cost" to the people of the state of Montana.**
- C. Yes, use of public facilities and equipment for a state employee's personal benefit is an ethical violation.**
- D. No, his supervisor gave him permission to use the facility.**

Your response is:

- A. **Sorry**, this is not the expected response. The facilities and tools were built and bought for official state use. Bill used state property for personal benefit and that is an ethical violation.
- B. **Sorry**, this is not the expected response. There is wear-and-tear on the tools, electricity and heat for the maintenance of the facility. The value of the services used or taken is not a determining factor. Use of public property for personal benefit is a ethical violation.
- C. **Congratulations!** This is the expected response. Use of public property for personal benefit is an ethical violation. The tools and shop are public property and Bill used them to repair his own car.
- D. **Sorry**. this is not the expected response. A supervisor cannot waive the requirements of state law. Bill would still be committing an ethical violation and the supervisor would be disciplined for overlooking and encouraging the violation.

Application:

Pete works for the state as a MDT construction worker at a remote location and is the only MDT employee in the area. Pete has a cellular phone assigned to him so that he can communicate with the District office and his supervisor. Pete has a car that he is trying to sell. Since he gets home so late, Pete put the MDT cell phone number in the paper as a daytime contact number for his advertisement. Pete answers the phone during the work day, but only takes down phone numbers and names so he can return the calls later on his lunch hour.

Query: Is Pete committing an ethical violation?



(Select the most correct response and turn the page.)

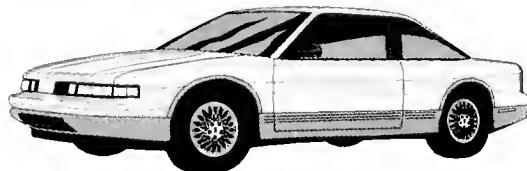
- A. **No**, Pete just takes down numbers and returns the calls on his lunch hour.
- B. **No**, Pete did not commit an ethical violation. The phone is assigned to him for use since he works at a remote location and cannot use the pay phone during his lunch break.
- C. **Yes**, Pete committed an ethical violation. The phone is provided for work-related calls only.

Your response is:

- A. **Sorry**, this is not the expected response. Although Pete returns the calls on his lunch hour, he used state property (the phone and time charged for the call) for his personal use.
- B. **Sorry**, this is not the expected response. The phone is assigned for Pete to use for communications that are related to his work.
- C. **Congratulations!** This is the correct response. Should the phone be needed for emergency communications, the state would not pursue violations for personal use of the phone under these conditions. But, unless it is an emergency, personal use of phones would be considered a violation.

Application:

Stephanie is assigned a state vehicle to commute to her work assignment. She needs to drop her children by the daycare, which is on her way to work.



Query: Would it be an ethical violation for Stephanie to transport the children in her state vehicle?

(Select the most correct response and turn the page.)

Choices:

- A. **No**, since she is not accumulating additional mileage on the vehicle, she is not committing an ethical violation. She's going that way anyway.
- B. **Yes**, she would be using state property for personal needs.
- C. **No**, since the passengers are her immediate family, it would be ok to transport them in the state vehicle.

Your response is:

- A. **Sorry**, this is not the correct response. Even though she is traveling in the same direction and would not be adding any additional mileage to the vehicle, it would be considered to be unethical use of a state vehicle for personal use. Also there is a liability issue since the passengers are not employees of the Department.
- B. **Congratulations!** This is considered the correct response.
- C. **Sorry**, this is not the correct response. The vehicle can be used to transport other employees of the Department, if they are working at the same job site. The department does not allow the transport of non-state employees regardless of the familial relationship with the driver. This is an example of using state property for personal benefit.

Application:

Jerry, an MDT maintenance employee, operates a state snowplow. His route includes the highway in front of his rural home. At the end of his shift on the way back to the shop, Jerry maneuvers the plow into his residential drive and removes the snow. His elderly neighbor comes out and asks him to clear his drive as well. Jerry clears both drives and heads back to the shop.



Query: Did Jerry commit an ethical violation?

(Select the most correct response and turn the page.)

Choices:

- A. **Yes**, since Jerry cleared the drive of his neighbor who is not a state employee, he committed an ethical violation.
- B. **No**, winter creates driving hazards for everyone. Jerry is keeping with the MDT "customer service" policy by clearing both drives. All it took was 15 minutes and he didn't bill the state for the time.
- C. **Yes**, Jerry is using the state snowplow for his personal benefit and also for his neighbor's personal benefit, which is an ethical violation.

Your response was:

- A. **Sorry**, this is not the expected response.
- B. **Sorry**, this is not the expected response. While MDT employees are to be responsive to the public and provide good service, it does not include use of state equipment for one individual's benefit.
- C. **Congratulations!** This is the expected response. While Jerry did not bill the state for the time spent to clear the driveways, he did use state equipment for his neighbor's and his personal benefit.

(If any of your responses to the above applications were incorrect, please read the Law and Discussion on page 17 before continuing.)

(You have completed Section IV - proceed to Section V.)

Section V Conflicts of Interest

The Law –

Basic Principle One – A public employee may not acquire an interest in any business or undertaking that may benefit economically by official action taken by the employee's agency (during employment or within 12 months of termination). Refer to 2-1-101, MCA.

Basic Principle Two - Disclosure laws – A public employee shall disclose any conflicts of interest before participating in the following:

- 1) official actions that affect his/her personal or private interest, or
- 2) official actions that negatively impact or affect his/her competing firms.

The public employee is prohibited from participation if either of the above situations arise. (Refer to 2-2-131, MCA and 2-2-105(5), MCA)

Discussion/Example:

Laws have been written to protect the public's interests by preventing a state employee or public servant from taking advantage of their state position of authority or knowledge. A circumstance which presents a conflict between one's duty as a public servant and one's interests as a private citizen is termed a "conflict of interest."

Query:

- A. A public employee may not participate in a decision that affects his/her _____ or _____ interests.
- B. An employee may not buy a business that benefits economically from his agency's actions within _____ months of termination of employment.

(Turn the page and check responses.)

Your response is:

- A. **Sorry**, this is not the expected response.
- B. **Sorry**, this response is incorrect. A state employee cannot divulge confidential information that gives another an unfair advantage over the general public. Joe's involvement as a money source is a conflict of interest with his position at the MDT.
- C. **Congratulations!** This is the correct response. Joe provided his uncle an unfair advantage by providing confidential information about the project, the land values and then provided the money for the purchase of the land which provides Joe an interest in the land.

Application:

Charlie is a partner in a computer company. He is also a programmer for the MDT. Charlie's job at MDT is to review bids and to determine which company provides software for MDT. Charlie does not bid on contracts within state government. Computech Computer Store has undermined Charlie's company's reputation in the community. Charlie reviews the bid for the current proposal and finds causes that he feels allow him to justify awarding the contract to KLUTZ Computer Company and not Computech's Computer Store.



Query: Did Charlie commit an ethical violation?

(Select the most correct response and turn the page.)

Choices:

- A. **No**, Charlie found legitimate reasons to award the contract to KLUTZ.
- B. **Yes**, Charlie committed an ethical violation, because he owns a company that routinely competes for business with the Computech Computer Store.
- C. **NO**, Charlie did not gain anything from his decision.

Your response is:

- A. **Sorry**, this is not the expected response.
- B. **Sorry**, this response is incorrect. A state employee cannot divulge confidential information that gives another an unfair advantage over the general public. Joe's involvement as a money source is a conflict of interest with his position at the MDT.
- C. **Congratulations!** This is the correct response. Joe provided his uncle an unfair advantage by providing confidential information about the project, the land values and then provided the money for the purchase of the land which provides Joe an interest in the land.

Application:

Charlie is a partner in a computer company. He is also a programmer for the MDT. Charlie's job at MDT is to review bids and to determine which company provides software for MDT. Charlie does not bid on contracts within state government. Computech Computer Store has undermined Charlie's company's reputation in the community. Charlie reviews the bid for the current proposal and finds causes that he feels allow him to justify awarding the contract to KLUTZ Computer Company and not Computech's Computer Store.



Query: Did Charlie commit an ethical violation?

(Select the most correct response and turn the page.)

Choices:

- A. **No**, Charlie found legitimate reasons to award the contract to KLUTZ.
- B. **Yes**, Charlie committed an ethical violation, because he owns a company that routinely competes for business with the Computech Computer Store.
- C. **NO**, Charlie did not gain anything from his decision.

Your response is:

- A. Sorry**, this is not the expected response.
- B. Congratulations**, this is the correct response. Charlie should have disclosed to his supervisor that he had a conflict of interest and removed himself from the contract review process.
- C. Sorry**, this is not the expected response. Since Charlie's company is a competitor, it can be perceived that he has a conflict of interest when reviewing his competitor's bid application.

**(If your responses are correct, continue.
If not, read the Law and Discussion
on Page 25, before continuing.)**

Section VI Post-State Employment

The Law – The one-year rule and the six-month rule for former state employees.

Basic Principle One – The one-year rule. Former state employees may **not** within one year from the date of termination of state employment obtain employment from which the employee will have a direct advantage over others because of matters the employee was directly involved with during his employment with the state. “Matters” is defined in this context as rules or administration of rules that the employee helped to draft or implement, and other activities such as claims or contested cases in which the employee was an active participant. (Refer to Section 2-2-105(3), MCA)

Basic Principle Two – The six-month rule. Within 6 months of termination of state employment, a former state employee may not contract or be employed by an employer who contracts with the state involving matters with which the former employee was directly involved during employment. (Refer to Section 2-2-201(1), MCA)



Discussion/Example:

The purpose of these laws is to ensure the interest of the state is **not** compromised either before or after a person completes their public service.

Query (fill in the blank):

A former state employee **may not** accept employment after voluntary termination of employment with the state if the following conditions exist:

- A. the employment involves participating in or supervising a contract the former state employee participated in within a _____ period of their termination, and/or
- B. the employment involves a rule, claim or contested case in which the former employee was an active participant within the _____ period prior to termination with the state.

(Turn page and check responses.)

Expected responses are:

- A. six months**
- B. twelve months**

**(IF your responses are correct continue.
If not, review the Basic Principles
on page 29, correct responses and continue.)**

Application:

Bob is an MDT financial analyst whose responsibilities include the study of population growth patterns and the identification of transportation needs based on the growth projections. Bob approved a \$50,000 funding program to study population growth and transportation needs in the state. Four months after the program is authorized, Bob leaves state employment, forms a consulting firm and submits a bid to contract with the state to conduct the study.



Query: Is Bob committing an ethical violation?

(Select the most correct response and turn the page.)

Choices:

- A. No, Bob is not committing an ethical violation because he will not be taking part in deciding who gets the contract.**
- B. Yes, Bob is committing an ethical violation because he did not wait six months before submitting the bid.**
- C. No, Bob is not committing an ethical violation because he did not help establish the criteria for awarding the bid and contract.**

Your response is:

- A. **Sorry**, this is **not** the expected response. Turn to page 29 and review the information provided.
- B. **Congratulations!** This is the expected response. Bob committed an ethical violation because while employed by MDT, he participated by authorizing the funding for the study. While he will not participate in the awarding of the bid, Bob is aware of the state's determination of need for the contract and the details expected in the study. This provides him an unfair advantage when submitting the bid and also **violates the six-month rule**.
- C. **Sorry**, this is **not** the expected response. Turn to page 29 and review the information provided.

(You have completed Section VI - proceed to Section VII.)



Section VII Political Campaigns and Lobbying

The Law –

Basic Principle One – A public employee may not use public time, facilities or equipment, supplies, personnel or funds for any campaign activity persuading or affecting a political decision. (Refer to Section 2-2-121(3), MCA)

Basic Principle Two – The participation of a state employee is limited in proceedings as a Department representative if he is a member of an outside organization affected by the hearing or proceedings being held. (Refer to Section 2-2-121(4), MCA)

Basic Principle Three – Limits lobbying by state employees. (Refer to Section 2-2-121(5), MCA)

Basic Principle Four – Prohibits political involvement of employers and employees in the workplace and during work hours. (Refer to Section 13-35-226, MCA)

Discussion:

The intent of this law is to minimize the influence and political pressure exerted on state employees by elected officials or Department officials that are appointed by elected officials. The law also maintains the state workplace as a politically neutral area. It does not prohibit a state employee from pursuing political involvement on their off-duty hours, as long as they do not involve their state position or office.

Query (fill in the blank, yes or no):

1. Can a state employee put an election bumper sticker on the state-owned vehicle that he uses? _____
2. Can a state employee put a campaign slogan in the window or on the desk at the office? _____
3. Can a state employee ask his employees to hand out political leaflets to other MDT employees in the hallways at the MDT building at lunch? _____
4. Can a state employee hand out political leaflets to the public attending a public meeting? _____
5. Can a state employee photocopy campaign brochures for a person he wants to be re-elected? _____
6. Can a state employee post “Please Remember to Vote” notices on the bulletin boards in the MDT buildings? _____

(Turn the page and check responses.)

Correct responses

1. **No**, the car is the property of the state and one cannot put campaign bumper stickers, etc. in state buildings or state vehicles.
2. **No**, basic principle four applies in this scenario, too.
3. **No**, basic principle four prohibits political involvement in the workplace and during work hours.
4. **Maybe**. If the state employee is not representing the state at the public meeting, he can hand out political leaflets. If he is attending the meeting as a representative for the state, he is on state time, acting in his official capacity as a state employee and cannot hand out political leaflets.
5. **No, basic** principal one prohibits use of public time, facilities equipment or supplies.
6. **Yes**, encouraging people to vote is not considered persuading or affecting a political decision.

**(IF your responses are correct continue.
If not, reread Discussion on page 33,
correct responses and continue.)**

Application:

Margo Smith works for a state agency. Her good friend and former co-worker Steve Pitts has decided to run for public office. He has asked Margo to sign a public endorsement supporting him that will be published in the paper and also to speak at several fund raisers. Margo accepts the speaking engagements and also signs the endorsement document. She thinks Steve will be an excellent candidate.



Query: Is Margo committing an ethical violation?

(Select the most correct response and turn the page.)

Choices:

- A. Yes.** Margo is a state employee and she should not express her political opinions.
- B. No.** As long as her involvement with the campaign is not during work hours, she is not committing an ethical violation.
- C. No.** Margo is entitled to express her opinions whenever, and wherever she wants.

Your response:

- A. Sorry**, this is not the expected response.
- B. Congratulations!** This is the expected response. Since Margo is not using work time, public facilities or equipment to promote the campaign, she can support Steve or any other political cause that she wishes.
- C. Sorry**, this is not the expected response. Campaigning during work hours or in the work place is prohibited. The use of her position and influence as a state employee to support Steve would also be prohibited.

(You have completed Section VII - proceed to Section VIII.)

Section VIII Compensation for Outside Activities

The Law –

The law prohibits public employees from receiving pay from two separate public employment positions that overlap for the hours being compensated. An employee can take annual leave or compensatory time and receive the second salary, or can relinquish the amount of the second salary. (Refer to Section 2-2-104, MCA)

Application:

Connie, an MDT employee, is selected for jury duty and spends a week attending the trial. She is given the time from work to serve on the jury. Connie thought the state allowed time for jury duty without docking an employee for the time spent, because it was a civic duty. She submitted her time sheet at work and collected a full week's pay. She received the court payment for her time on the jury. Connie cashed the check and took her family out to dinner since they were so patient when she was gone from home during the trial.



Query: Did Connie commit an ethical violation?

(Select the most correct response and turn the page.)

Choices:

- A. No,** the state grants leave for jury time because otherwise, no one could afford to perform jury duty.
- B. Yes,** Connie was correct in assuming she was allowed to take time off from her job for jury duty. But, the law requires she relinquish the salary received from the court or take leave time (or compensatory time).
- C. No,** her supervisor told her it was OK to take the time off for jury duty and did not explain that she could not keep the money from the court.

Your Response Is:

- A. Sorry**, this is **not** the expected response.
- B. Congratulations!** This is the anticipated response.
- C. Sorry**, this is **not** the expected response.

**(IF your responses are correct continue.
If not, reread the Law on page 36,
correct your response and continue.)**

(You have completed Section VIII. Proceed to Section IX.)

Section IX Confidential Information vs the Public's "Right to Know"

Terminology:

Confidential Information	Confidential information can be one of four types – information involving personal privacy matters, “trade secrets,” corporate tax records, and information, that while not specifically defined as “privileged,” would be a violation of the Code of Ethics if released.
Personal Privacy Matters	Personal privacy matters includes very personal information such as social security numbers, individual income tax records and information, motor vehicle accident reports and records concerning age, gender and race. It does not include names and addresses.
Trade secret	A “trade secret” is information or computer software, including a formula, pattern, compilation, program, device method, technique, or process that has economic value to its owner since it is not generally known or easily ascertainable by others

The Law –

Basic Principle One – A public officer, legislator, or **public employee** may not disclose or use *confidential information* for his own personal economic interests. (Refer to Section 2-2-104, MCA)

Basic Principle Two – A person shall **not** be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure. (Refer to Article II, Section 9 of the Montana Constitution)

Basic Principle Three – The right of an individual’s privacy is essential to the well being of a free society and shall not be infringed without the showing of a compelling state interest. (Refer to Article II, Section 10 of the Montana Constitution)

Basic Principle Four – State employers, labor organizations and employment agencies shall maintain records on age, sex, and race that are required to administer the civil rights laws and regulations. **These records are confidential** and available only to federal and state personnel legally charged with administering civil rights laws and regulations. However, statistical information compiled from the records on age, sex and race shall be made available to the general public. (Refer to Section 49-2-102, MCA)

Basic Principle Five – Accident reports and supplemental information received by the Department of Justice are confidential and not open to the general public. The reports and information may be examined and copied by a person involved in the accident, the representative of such person, a party to a civil action arising from the accident or the executor or administrator of the estate of a person involved in an accident who is deceased. Any employee of the MDT having access to these reports **must** maintain the confidentiality of information contained in these reports. (Refer to Section 61-7-114, MCA)

Discussion:

Public employees are occasionally caught in the middle of two competing provisions of the Montana Constitution –

- one that grants public access to confidential information;
- the other that protects an individual's right to privacy.

Once a document is placed in the files at the Department of Transportation, it becomes a “public record” and **may be** subject to the “public’s right to know” law. Information such as social security numbers, individual income tax records, motor vehicle accident reports, and records concerning age, gender and race is protected by Montana law and sometimes federal law. **Decisions regarding what information is to be released to the public are made by the Legal Services Division of the Department of Transportation.**

Query (fill in the blank):

1. A state employee **may not use** _____ information for personal economic benefit.
2. The public's ability to view records kept on file at the Department is called the _____.
3. An individual's right to have information kept confidential is called the _____.
4. _____ makes all decisions at the Department of Transportation regarding what records or information is to be shared with the public.
5. Information found in traffic accident reports is _____ and may not be released to the general public.

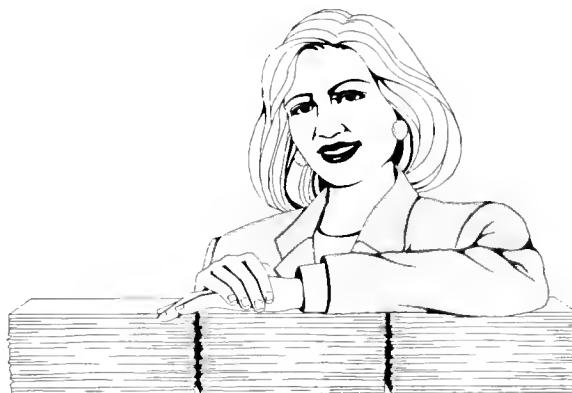
(Turn page and correct responses.)

Correct responses:

1. confidential
2. "right-to-know"
3. "right –to-privacy"
4. Legal Services Division
5. confidential

Application:

Morticia's office gets a memo from the Denver office of the U.S. Department of Labor requesting a copy of a highway project's payroll ledger (which Morticia has). The ledger contains the names of workers, their social security numbers and their addresses and phone numbers. She photocopies it and mails it "as-is" to the requestor.



Query: Did Morticia commit an ethical violation?

(Select most correct response and turn the page.)

Choices:

1. **No.** She sent it to another government agency and that is OK.
2. **No.** The Department of Labor has all of the personal information and social security numbers on file, so there's no breach of privacy.
3. **Yes.** Even though the Department of Labor may be entitled to a copy of the document, Morticia should have sent them a copy of the documents with the social security numbers blacked out.
4. **Yes.** Since the document has social security numbers on it, she should not have provided a copy to anyone, including the Department of Labor.

Your response is:

- A. Sorry**, this is not the expected response. The release of confidential information to another government agency **may not** be appropriate. Upon receipt of this request, Morticia should have contacted the Legal Services Division for their review of the request and then followed their advice on what to provide in response to the request.
- B. Sorry**, this is not the expected response.
- C. Congratulations!** This is the correct response. Even though the Department of Labor may be entitled to a copy of the document, Morticia would have been advised by Legal Services to black out the social security numbers before making a copy of the document to send to the Department of Labor.
- D. Sorry**, this is not the expected response. The Basic Principle Two gives the public the right to have access to documents, but a legal determination must be made as to what information is to be shared, and what information must be protected (denied) to preserve the individual's right to privacy (Basic Principle Three).

**(IF your responses are correct continue.
If not, reread page 39,
correct your responses and continue.)**

(You have completed Section IX - proceed to Section X.)

Section X Nepotism

Terminology:

Nepotism The bestowal of political patronage (favor) by reason of relationship rather than of merit.

The Law –

Basic Principle One – Unlawful appointment of relatives.

Paraphrased, this law states it is unlawful for a person or member of any board, bureau or commission or a department head (state employee) to appoint any relative (blood or by marriage) to a position of trust or salary. (Refer to Section 2-2-302, MCA)

Basic Principle Two – Unlawful to agree to appoint relatives.

Paraphrased, this law states it is unlawful to agree to appoint relatives (blood or by marriage). (Refer to Section 2-2-303, MCA)

Basic Principle Three – Penalty for violation of Nepotism Law It is a misdemeanor offense, punishable by fine or imprisonment in county jail.

Query (matching):

_____	1. Violation of Nepotism Law	a. imprisonment
_____	2. Bestowal of political favor upon a relative without consideration of merit.	b. Misdemeanor
_____	3. Nepotism is punishable by fine or by	c. Nepotism

(Turn the page and check responses.)

Correct Responses:

1. b
2. c
3. a

Application:

Fritz is the head of building maintenance at the Department of Transportation. His nephew Peter, who just graduated from high school, is looking for a summer job. Fritz knows that Peter has been doing lawn mowing for years and is very handy with small equipment such as hedge trimmers and weed whackers. Fritz hires Peter to do summer lawn care and maintenance at the MDT, without having Peter submit a state job application form and go through the standard MDT hiring process (the submission of an application, a pre-employment exam and an interview),



Query: Has Fritz violated the nepotism laws?

(Choose the most correct response and turn the page.)

Choices:

- A. **No**, it was just a temporary position and Peter was very qualified for the job.
- B. **Yes**, Fritz has violated the nepotism laws. Regardless of whether Peter was related to him or not, all applicants must go through the application process before being considered for hire.
- C. **Yes**, Fritz could have hired another employee's son without going through the application process, but since Pete is related to him, Fritz violated the nepotism laws.

Your response is:

- A. Sorry**, this is not the expected response. All applicants must go through the same job screening process that includes submission of an application, sometimes a pre-employment exam and a job interview.
- B. Congratulations!** This is the expected response.
- C. Sorry**, this is not the expected response. It is true that Fritz has violated the Nepotism Law, but it is not true that one can hire another employee's son without following the mandated hiring process.

(You have completed Section X - proceed to Section XI.)

Section XI Penalties

Terminology:

Civil	Pertaining to the private rights of individuals and to legal actions involving individuals - to be distinguished from criminal or political actions
Criminal	Involving or relating to crime (a violation of the law)
Misdemeanor	A minor offense or breaking of a municipal ordinance for which states provide a lesser punishment than for a felony.
Official Misconduct	Use of public assets for an employee's private business purposes
Public Assets	Paid employee time, facilities, equipment, personnel or money

The Law –

Inappropriate use of public assets - The inappropriate use of public time, facilities, equipment, supplies, personnel or funds for the employee's private business purposes is a misdemeanor offense and punishable by a fine of \$50 to \$1,000, by imprisonment in the county jail for not more than 6 months or both. (refer to Section 2-2-121(2), MCA)

Violations of the Code of Ethics - Violations are reviewed by the commissioner of political practices and the commissioner may impose an administrative penalty of \$50 to \$1000 and may recommend disciplinary action for violators if they are state employees. Violators may be charged for the costs of all proceedings. (refer to Section 2-2-136, MCA)

Illegal lobbying or campaign practices - The penalty for local government officers or employees found guilty of illegal lobbying practices or campaign practices may include a civil fine of \$50 to \$1000 and appropriate disciplinary action. (refer to Section 2-2-144, MCA)

Official Misconduct - A public servant convicted of the offense of official misconduct shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months or both. (refer to Section 45-7-104(1), MCA)

Unlawful acts of Employers and Employees - This section outlines illegal political practices that may coerce, command or require a public employee to support political views or candidates. A violation of this section is punishable by a fine not to exceed \$1000 or imprisonment in the county jail for a term not to exceed 6 months or both for each separate offense. (refer to Section 13-35-226(4), MCA)

Discussion:

Violation of a criminal law (statute) is called a criminal offense or a crime. Most of Montana's criminal laws are found in Title 45 of the Montana Codes Annotated (MCA).

The Code of Ethics are state laws and most are not criminal laws. Violation of laws that are not criminal laws could still result in disciplinary action that may include termination of employment with the state.

Appendix A Terms and Definitions

Civil	Pertaining to the private rights of individuals and to legal actions involving individuals - to be distinguished from criminal or political actions
Confidential information	Confidential information can be one of four types – information involving personal privacy matters, “trade secrets,” corporate tax records, and information, that while not specifically defined as “privileged,” would be a violation of the Code of Ethics if released.
Conflict of Interest	Actions construed to be in the interest of the employee and not in the public’s best interest.
Crime	Violation of a law punishable by jail time and/or fines.
Criminal	Involving or relating to crime (a violation of the law)
Felony	A major crime with a serious punishment such as imprisonment or death.
Gift	Anything with “ <i>pecuniary value</i> ” or benefit given by another.
Gratuity	A gratuity is something given by someone (a contractor for example) without payment by the recipient in return for services, favors or benefits.
Laws	Rules of conduct established and enforced by the authority, legislation or custom of a given community or group.
MCA	Abbreviation for Montana Codes Annotated (laws enacted by the Montana Legislature).
Misdemeanor	A minor offense or breaking of a municipal ordinance for which states provide a lesser punishment than for a felony.
Nepotism	The bestowal of political patronage (favor) by reason of relationship rather than of merit.
Official Misconduct	Use of public assets for an employee’s private business purposes.

Personal Privacy Matters	Personal privacy matters includes very personal information such as social security numbers, individual income tax records and information, motor vehicle accident reports and records concerning age, gender and race. It does not include names and addresses.
Pecuniary	Something with a monetary value.
Public Assets	Paid employee time, facilities, equipment, personnel or money
Statute	A law passed by the Legislature and contained in the MCA.
Trade Secret	A “trade secret” is information or computer software, including a formula, pattern, compilation, program, device method, technique, or process that has economic value to its owner since it is not generally known or easily ascertainable by others.

The Montana Constitution

Article II. DECLARATION OF RIGHTS

Section 9. Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Section 10. Right of privacy. The right of individual privacy is essential to the well being of a free society and shall not be infringed without the showing of a compelling state interest.

Article XIII. GENERAL PROVISIONS

Section 1. Nonmunicipal corporations.

- (1) Corporate charters shall be granted, modified, or dissolved only pursuant to general law.
- (2) The legislature shall provide protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.
- (3) The legislature shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions or considerations already passed.

Section 2. Consumer counsel. The legislature shall provide for an office of consumer counsel, which shall have the duty of representing consumer interests in hearings before the public service commission or any other successor agency. The legislature shall provide for the funding of the office of consumer counsel by a special tax on the net income or gross revenues of regulated companies.

Section 3. Repealed. Sec. 1, Const. Amend. No. 16, 1986.

Section 4. Code of ethics. The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.

Section 5. Exemption laws. The legislature shall enact liberal homestead and exemption laws.

Section 6. Perpetuities. No perpetuities shall be allowed except for charitable purposes.

The Montana Codes Annotated

Title 2 GOVERNMENT STRUCTURE AND ADMINISTRATION

Title 2, Chapter 2, Part 1 Code of Ethics

2-2-101. Statement of purpose. The purpose of this part is to set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana. This code recognizes distinctions between legislators, other officers and employees of state government, and officers and employees of local government and prescribes some standards of conduct common to all categories and some standards of conduct adapted to each category. The provisions of this part recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

History: En. 59-1701 by Sec. 1, Ch. 569, L. 1977; R.C.M. 1947, 59-1701.

2-2-102. Definitions. As used in this part, the following definitions apply:

- 1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.
 - (2) "Compensation" means any money or economic benefit conferred on or received by any person in return for services rendered or to be rendered by the person or another.
 - (3) (a) "Gift of substantial value" means a gift with a value of \$50 or more for an individual.
 - (b) The term does not include:
 - (i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;
 - (ii) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer's or public employee's office or employment or when the officer or employee is in attendance in an official capacity;
 - (iii) educational material directly related to official governmental duties;
 - (iv) an award publicly presented in recognition of public service; or
 - (v) educational activity that:
 - (A) does not place or appear to place the recipient under obligation;
 - (B) clearly serves the public good; and
 - (C) is not lavish or extravagant.
 - (4) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.
 - (5) "Private interest" means an interest held by an individual that is:
 - (a) an ownership interest in a business;
 - (b) a creditor interest in an insolvent business;
 - (c) an employment or prospective employment for which negotiations have begun;
 - (d) an ownership interest in real property;
 - (e) a loan or other debtor interest; or

- (f) a directorship or officership in a business.
- (6) "Public employee" means:
 - (a) any temporary or permanent employee of the state or any subdivision of the state;
 - (b) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and
 - (c) a person under contract to the state.
- (7) "Public officer" includes any state officer. The term includes an elected officer of any subdivision of the state.
- (8) (a) "State agency" includes:
 - (i) the state;
 - (ii) the legislature and its committees;
 - (iii) all executive departments, boards, commissions, committees, bureaus, and offices;
 - (iv) the university system; and
 - (v) all independent commissions and other establishments of the state government.
- (b) The term does not include the judicial branch.
- (9) "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102.

History: En. 59-1702 by Sec. 2, Ch. 569, L. 1977; R.C.M. 1947, 59-1702; amd. Sec. 3, Ch. 18, L. 1995; amd. Sec. 1, Ch. 562, L. 1995.

2-2-103. Public trust -- public duty. (1) The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees. A public officer, legislator, or public employee shall carry out the individual's duties for the benefit of the people of the state.

- (2) A public officer, legislator, or public employee whose conduct departs from the person's public duty is liable to the people of the state and is subject to the penalties provided in this part for abuse of the public's trust.
- (3) This part sets forth various rules of conduct, the transgression of any of which is a violation of public duty, and various ethical principles, the transgression of any of which must be avoided.
- (4) (a) The enforcement of this part for:
 - (i) state officers, legislators, and state employees is provided for in 2-2-136 and 2-2-137;
 - (ii) legislators, involving legislative acts, is provided for in 2-2-135 and for all other acts is provided for in 2-2-136 and 2-2-137;
 - (iii) local government officers and employees is provided for in 2-2-144.
- (b) Any money collected in the civil actions that is not reimbursement for the cost of the action must be deposited in the general fund of the unit of government.

History: En. 59-1703 by Sec. 3, Ch. 569, L. 1977; R.C.M. 1947, 59-1703; amd. Sec. 216, Ch. 685, L. 1989; amd. Sec. 2, Ch. 562, L. 1995.

2-2-104. Rules of conduct for public officers, legislators, and public employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached the actor's public duty. A public officer, legislator, or public employee may not:

- (a) disclose or use confidential information acquired in the course of official duties in order to further substantially the individual's personal economic interests; or
- (b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:
 - (i) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or
 - (ii) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.
- (2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest

substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of the services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

(3) (a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may not receive salaries from two separate public employment positions that overlap for the hours being compensated, unless:

(i) the public officer, legislator, or public employee reimburses the public entity from which the employee is absent for the salary paid for performing the function from which the officer, legislator, or employee is absent; or

(ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by the amount of salary received from the other public employer in order to avoid duplicate compensation for the overlapping hours.

(b) Subsection (3)(a) does not prohibit:

(i) a public officer, legislator, or public employee from receiving income from the use of accrued leave or compensatory time during the period of overlapping employment; or

(ii) a public school teacher from receiving payment from a college or university for the supervision of student teachers who are enrolled in a teacher education program at the college or university if the supervision is performed concurrently with the school teacher's duties for a public school district.

(c) In order to determine compliance with this subsection (3), a public officer, legislator, or public employee subject to this subsection (3) shall disclose the amounts received from the two separate public employment positions to the commissioner of political practices.

History: En. 59-1704 by Sec. 4, Ch. 569, L. 1977; R.C.M. 1947, 59-1704; amd. Sec. 3, Ch. 562, L. 1995; amd. Sec. 1, Ch. 243, L. 1997.

2-2-105. Ethical requirements for public officers and public employees. (1) The requirements in this section are intended as rules of conduct, and violations constitute a breach of the public trust and public duty of office or employment in state or local government.

(2) Except as provided in subsection (4), a public officer or public employee may not acquire an interest in any business or undertaking that the officer or employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the officer's or employee's agency.

(3) A public officer or public employee may not, within 12 months following the voluntary termination of office or employment, obtain employment in which the officer or employee will take direct advantage, unavailable to others, of matters with which the officer or employee was directly involved during a term of office or during employment. These matters are rules, other than rules of general application, that the officer or employee actively helped to formulate and applications, claims, or contested cases in the consideration of which the officer or employee was an active participant.

(4) When a public employee who is a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority is required to take official action on a matter as to which the public employee has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the public employee's influence, benefit, or detriment in regard to the matter, the public employee shall disclose the interest creating the conflict prior to participating in the official action.

(5) A public officer or public employee may not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when the officer or employee has a substantial personal interest in a competing firm or undertaking.

History: En. 59-1709 by Sec. 9, Ch. 569, L. 1977; R.C.M. 1947, 59-1709; amd. Sec. 4, Ch. 562, L. 1995.

2-2-106. Disclosure. (1) (a) Prior to December 15 of each even-numbered year, each elected official or department director shall file with the commissioner a business disclosure statement on a form provided by the commissioner. An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a) during the same period.

(b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of the time that the candidate files for office, file a business disclosure statement with the commissioner on a form provided by the commissioner.

(c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b) is required to file the business disclosure statement at the earlier of the time of submission of the person's name for confirmation or the assumption of the office.

(2) The statement must provide the following information:

- (a) the name, address, and type of business of the individual;
- (b) each present or past employing entity from which benefits, including retirement benefits, are currently received by the individual;
- (c) each business, firm, corporation, partnership, and other business or professional entity or trust in which the individual holds an interest;
- (d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual is an officer or director, regardless of whether or not the entity is organized for profit; and
- (e) all real property, other than a personal residence, in which the individual holds an interest. Real property may be described by general description.

(3) An individual may not assume or continue to exercise the powers and duties of the office to which that individual has been elected or appointed until the statement has been filed as provided in subsection (1).

(4) The commissioner shall make the business disclosure statements available to any individual upon request.

History: En. Sec. 16, I.M. No. 85, approved Nov. 4, 1980; amd. Sec. 12, Ch. 562, L. 1995; Sec. 5-7-213, MCA 1993; redes. 2-2-106 by Code Commissioner, 1995.

2-2-107 through 2-2-110 reserved.

2-2-111. Rules of conduct for legislators. Proof of commission of any act enumerated in this section is proof that the legislator committing the act has breached the legislator's public duty. A legislator may not:

- (1) accept a fee, contingent fee, or any other compensation, except the official compensation provided by statute, for promoting or opposing the passage of legislation;
- (2) seek other employment for the legislator or solicit a contract for the legislator's services by the use of the office.

History: En. 59-1705 by Sec. 5, Ch. 569, L. 1977; R.C.M. 1947, 59-1705; amd. Sec. 5, Ch. 562, L. 1995.

2-2-112. Ethical requirements for legislators. (1) The requirements in this section are intended as rules for legislator conduct, and violations constitute a breach of the public trust of legislative office.

(2) A legislator has a responsibility to the legislator's constituents to participate in all matters as required in the rules of the legislature. A legislator concerned with the possibility of a conflict may briefly present the facts to the committee of that house that is assigned the determination of ethical issues. The committee shall advise the legislator as to whether the legislator should disclose the interest prior to voting on the issue pursuant to the provisions of subsection (5). The

legislator may, subject to legislative rule, vote on an issue on which the legislator has a conflict, after disclosing the interest.

(3) When a legislator is required to take official action on a legislative matter as to which the legislator has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the legislator's influence, benefit, or detriment in regard to the legislative matter, the legislator shall disclose the interest creating the conflict prior to participating in the official action, as provided in subsections (2) and (5) and the rules of the legislature. In making a decision, the legislator shall consider:

- (a) whether the conflict impedes the legislator's independence of judgment;
- (b) the effect of the legislator's participation on public confidence in the integrity of the legislature;
- (c) whether the legislator's participation is likely to have any significant effect on the disposition of the matter; and
- (d) whether a pecuniary interest is involved or whether a potential occupational, personal, or family benefit could arise from the legislator's participation.

(4) A conflict situation does not arise from legislation or legislative duties affecting the membership of a profession, occupation, or class.

(5) A legislator shall disclose an interest creating a conflict, as provided in the rules of the legislature. A legislator who is a member of a profession, occupation, or class affected by legislation is not required to disclose an interest unless the class contained in the legislation is so narrow that the vote will have a direct and distinctive personal impact on the legislator. A legislator may seek a determination from the appropriate committee provided for in 2-2-135.

History: En. 59-1708 by Sec. 8, Ch. 569, L. 1977; R.C.M. 1947, 59-1708; amd. Sec. 6, Ch. 562, L. 1995.

2-2-113 through 2-2-120 reserved.

2-2-121. Rules of conduct for public officers and public employees. (1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

- (a) use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;**
- (b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;**
- (c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;**
- (d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;**
- (e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or**
- (f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.**

(3) A public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds for any campaign activity persuading or affecting a political decision unless the use is:

- (a) authorized by law; or**
- (b) properly incidental to another activity required or authorized by law, such as the function of an elected public official, the official's staff, or the legislative staff in the normal course of duties.**

(4) A state employee may not participate in a proceeding when an organization of which the employee is an officer or director is:

- (a) involved in a proceeding before the employing state agency that is within the scope of the employee's job duties; or**

(b) attempting to influence a local, state, or federal proceeding in which the employee represents the state.

(5) A state officer or state employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization of which the officer or employee is a member while performing the officer's or employee's job duties. The provisions of this subsection do not prohibit an officer or employee from performing charitable fundraising activities if approved by the employee's supervisor or authorized by law.

(6) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

(7) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(8) A person who purposely or knowingly violates this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$50 or more than \$1,000, by imprisonment in the county jail for not more than 6 months, or by both. A civil proceeding under 2-2-136 or 2-2-144 does not preclude an action under this subsection.

History: En. 59-1706 by Sec. 6, Ch. 569, L. 1977; R.C.M. 1947, 59-1706; amd. Sec. 1, Ch. 59, L. 1991; amd. Sec. 7, Ch. 562, L. 1995; amd. Sec. 3, Ch. 42, L. 1997.

2-2-122 through 2-2-124 reserved.

2-2-125. Rules of conduct for local government officers and employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached a public duty subjecting the actor to disciplinary action by the employing entity.

(2) An officer or employee of local government may not:

(a) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties; or

(b) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

(3) Notwithstanding the provisions of subsection (2), a member of the governing body of a local government may perform an official act when the member's participation is necessary to obtain a quorum or otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety.

History: En. 59-1707 by Sec. 7, Ch. 569, L. 1977; R.C.M. 1947, 59-1707; amd. Sec. 8, Ch. 562, L. 1995.

2-2-126 through 2-2-130 reserved.

2-2-131. Disclosure. A public officer or public employee shall, prior to acting in a manner that may impinge on public duty, including the award of a permit, contract, or license, disclose the nature of the private interest that creates the conflict. The public officer or public employee shall make the disclosure in writing to the secretary of state, listing the amount of private interest, if any, the purpose and duration of the person's services rendered, if any, and the compensation received for the services or other information that is necessary to describe the interest. If the public officer or public employee then performs the official act involved, the officer or employee shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act.

History: En. 59-1710 by Sec. 10, Ch. 569, L. 1977; R.C.M. 1947, 59-1710; amd. Sec. 9, Ch. 562, L. 1995.

2-2-132. Repealed. Sec. 22, Ch. 562, L. 1995.

History: En. 59-1711 by Sec. 11, Ch. 569, L. 1977; R.C.M. 1947, 59-1711.

2-2-133 and 2-2-134 reserved.

Title 2, Chapter 2, Part 2 Proscribed Acts Related to Contracts and Claims

2-2-201. Public officers, employees, and former employees not to have interest in contracts -- local government waiver. (1) Members of the legislature; state, county, city, town, or township officers; or any deputy or employee of an enumerated governmental entity may not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees. A former employee may not, within 6 months following the termination of employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which the former employee was directly involved during employment. In this section the term:

- (a) "be interested in" does not include holding a minority interest in a corporation;
- (b) "contract" does not include:
 - (i) contracts awarded to the lowest responsible bidder or proposer based on competitive bidding procedures;
 - (ii) merchandise sold to the highest bidder at public auctions;
 - (iii) investments or deposits in financial institutions that are in the business of loaning or receiving money;
 - (iv) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It is presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.
- (c) "former employee" does not include a person whose employment with the state was involuntarily terminated due to a reduction in force or other involuntary termination not involving violation of the provisions of this chapter.

(2) The governing body of a city, town, or county may waive the application of the prohibition contained in subsection (1) for a present or former city, town, or county officer or employee who in an official capacity does not influence the decisionmaking process or supervise a function regarding the contract in question. A governing body may grant a waiver under this subsection only after publicly disclosing the nature of the conflict at an advertised public hearing held for that purpose. In determining whether to grant a waiver, the governing body shall consider the following factors, where applicable:

- (a) whether the waiver would provide to a program or project a significant benefit or an essential skill or expertise that would otherwise not be available;
- (b) whether an opportunity was provided for open competitive bidding or negotiation;
- (c) whether the person affected is a member of a clearly identified group of persons that is the intended beneficiary of the program or project involved in the contract; and
- (d) whether the hardship imposed on the affected person or the governmental entity by prohibiting the conflict will outweigh the public interest served by avoiding the conflict.

History: En. Sec. 1020, Pol. C. 1895; re-en. Sec. 368, Rev. C. 1907; re-en. Sec. 444, R.C.M. 1921; Cal. Pol. C. Sec. 920; re-en. Sec. 444, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1973; R.C.M. 1947, 59-501; amd. Sec. 1, Ch. 377, L. 1979; amd. Sec. 1, Ch. 458, L. 1981; amd. Sec. 1, Ch. 65, L. 1991; amd. Sec. 1, Ch. 322, L. 1993.

2-2-202. Public officers not to have interest in sales or purchases. State, county, town, township, and city officers must not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

History: En. Sec. 1021, Pol. C. 1895; re-en. Sec. 369, Rev. C. 1907; re-en. Sec. 445, R.C.M. 1921; Cal. Pol. C. Sec. 921; re-en. Sec. 445, R.C.M. 1935; R.C.M. 1947, 59-502.

2-2-203. Voidable contracts. Every contract made in violation of any of the provisions of 2-2-201 or 2-2-202 may be avoided at the instance of any party except the officer interested therein

History: En. Sec. 1022, Pol. C. 1895; re-en. Sec. 370, Rev. C. 1907; re-en. Sec. 446, R.C.M. 1921; Cal. Pol. C. Sec. 922; re-en. Sec. 446, R.C.M. 1935; R.C.M. 1947, 59-503.

2-2-204. Dealings in warrants and other claims prohibited. The state officers, the several county, city, town, and township officers of this state, their deputies and clerks, are prohibited from purchasing or selling or in any manner receiving to their own use or benefit or to the use or benefit of any person or persons whatever any state, county, or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state or any county, city, town, or township thereof except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy, clerk, and evidences of the funded indebtedness of such state, county, city, township, town, or corporation.

History: En. Sec. 1023, Pol. C. 1895; re-en. Sec. 371, Rev. C. 1907; re-en. Sec. 447, R.C.M. 1921; Cal. Pol. C. Sec. 923; re-en. Sec. 447, R.C.M. 1935; R.C.M. 1947, 59-504.

2-2-205. Affidavit to be required by auditing officers. Every officer whose duty it is to audit and allow the accounts of other state, county, city, township, or town officers must, before allowing such accounts, require each of such officers to make and file with him an affidavit that he has not violated any of the provisions of this part.

History: En. Sec. 1024, Pol. C. 1895; re-en. Sec. 372, Rev. C. 1907; re-en. Sec. 448, R.C.M. 1921; Cal. Pol. C. Sec. 924; re-en. Sec. 448, R.C.M. 1935; R.C.M. 1947, 59-505.

2-2-206. Officers not to pay illegal warrant. Officers charged with the disbursement of public moneys must not pay any warrant or other evidence of indebtedness against the state, county, city, town, or township when the same has been purchased, sold, received, or transferred contrary to any of the provisions of this part.

History: En. Sec. 1025, Pol. C. 1895; re-en. Sec. 373, Rev. C. 1907; re-en. Sec. 449, R.C.M. 1921; Cal. Pol. C. Sec. 925; re-en. Sec. 449, R.C.M. 1935; R.C.M. 1947, 59-506.

Title 2, Chapter 2, Part 3

Nepotism

2-2-301. Nepotism defined. Nepotism is the bestowal of political patronage by reason of relationship rather than of merit.

History: En. Sec. 1, Ch. 12, L. 1933; re-en. Sec. 456.1, R.C.M. 1935; R.C.M. 1947, 59-518.

2-2-302. Appointment of relative to office of trust or emolument unlawful -- exceptions -- publication of notice. (1) Except as provided in subsection (2), it is unlawful for a person or member of any board, bureau, or commission or employee at the head of a department of this state or any political subdivision of this state to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

(2) The provisions of this section and 2-2-303 do not apply to:

- (a) a sheriff in the appointment of a person as a cook or an attendant;
- (b) school district trustees if all the trustees, with the exception of any trustee who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a trustee;
- (c) a school district in the employment of a person as a substitute teacher who is not employed as a substitute teacher for more than 30 consecutive school days;
- (d) the renewal of an employment contract of a person who was initially hired before the member of the board, bureau, or commission or the department head to whom the person is related assumed the duties of the office;
- (e) the employment of election judges; or
- (f) the employment of pages or temporary session staff by the legislature.

(3) Prior to the appointment of a person referred to in subsection (2), the school district trustees shall give written notice of the time and place of their intended action. The notice must be published at least 15 days prior to the trustees' intended action in a newspaper of general circulation in the county in which the school district is located.

History: En. Sec. 2, Ch. 12, L. 1933; re-en. Sec. 456.2, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1955; amd. Sec. 27, Ch. 535, L. 1975; R.C.M. 1947, 59-519(part); amd. Sec. 1, Ch. 117, L. 1987; amd. Sec. 1, Ch. 55, L. 1991; amd. Sec. 1, Ch. 238, L. 1991; amd. Sec. 10, Ch. 562, L. 1995.

2-2-303. Agreements to appoint relative to office unlawful. It shall further be unlawful for any person or any member of any board, bureau, or commission or employee of any department of this state or any political subdivision thereof to enter into any agreement or any promise with other persons or any members of any boards, bureaus, or commissions or employees of any department of this state or any of its political subdivisions thereof to appoint to any position of trust or emolument any person or persons related to them or connected with them by consanguinity within the fourth degree or by affinity within the second degree.

History: En. Sec. 2, Ch. 12, L. 1933; re-en. Sec. 456.2, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1955; amd. Sec. 27, Ch. 535, L. 1975; R.C.M. 1947, 59-519(part).

2-2-304. Penalty for violation of nepotism law. Any public officer or employee or any member of any board, bureau, or commission of this state or any political subdivision thereof who shall, by virtue of his office, have the right to make or appoint any person to render services to this state or any subdivision thereof and who shall make or appoint to such services or enter into any agreement or promise with any other person or employee or any member of any board, bureau, or commission of any other department of this state or any of its subdivisions to appoint to any position any person or persons related to him or them or connected with him or them by consanguinity within the fourth degree or by affinity within the second degree shall thereby be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not less than \$50 or more than \$1,000 or by imprisonment in the county jail for not more than 6 months or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 12, L. 1933; re-en. Sec. 456.3, R.C.M. 1935; R.C.M. 1947, 59-520; amd. Sec. 1, Ch. 253, L. 1989.

Title 13 ELECTIONS

Title 13, CHAPTER 35, Part 2 ELECTION AND CAMPAIGN PRACTICES AND CRIMINAL PROVISIONS

13-35-226. Unlawful acts of employers and employees. (1) It is unlawful for any employer, in paying employees the salary or wages due them, to include with their pay the name of any candidate or any political mottoes, devices, or arguments containing threats or promises, express or implied, calculated or intended to influence the political opinions or actions of the employees. It is unlawful for an employer to exhibit in a place where the employer's workers or employees may be working any handbill or placard containing any threat, promise, notice, or information that, in case any particular ticket or political party, organization, or candidate is elected, work in the employer's place or establishment will cease, in whole or in part, or will be continued or increased; the employer's place or establishment will be closed; the salaries or wages of the workers or employees will be reduced or increased; or other threats or promises, express or implied, intended or calculated to influence the political opinions or actions of the employer's workers or employees. This section applies to corporations, individuals, and public officers and employees.

(2) A person may not attempt to coerce, command, or require a public employee to support or oppose any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(3) A public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at the place of employment. However, subject to 2-2-121, this section is not intended to restrict the right of a public employee to express personal political views.

(4) Any person who violates the provisions of this section shall be fined an amount not to exceed \$1,000, be imprisoned in the county jail for a term not to exceed 6 months, or both, for each separate offense.

History: En. 23-47-134 by Sec. 34, Ch. 334, L. 1977; R.C.M. 1947, 23-47-134; amd. Sec. 222, Ch. 571, L. 1979; amd. Sec. 1, Ch. 655, L. 1983; amd. Sec. 13, Ch. 562, L. 1995.

Title 45 Crimes

Title 45, Chapter 7, Part 1

Bribery and Corrupt Influence

45-7-104. Gifts to public servants by persons subject to their jurisdiction. (1) No public servant in any department or agency exercising regulatory function, conducting inspections or investigations, carrying on a civil or criminal litigation on behalf of the government, or having custody of prisoners shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation, or custody or against whom such litigation is known to be pending or contemplated.

(2) No public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims, or other pecuniary transactions of the government shall solicit, accept, or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim, or transaction.

(3) No public servant having judicial or administrative authority and no public servant employed by or in a court or other tribunal having such authority or participating in the enforcement of its decision shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such public servant or tribunal with which he is associated.

(4) No legislator or public servant employed by the legislature or by any committee or agency thereof shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before the legislature or any committee or agency thereof.

(5) This section shall not apply to:

- (a) fees prescribed by law to be received by a public servant or any other benefit for which the recipient gives legitimate consideration or to which he is otherwise entitled; or
- (b) trivial benefits incidental to personal, professional, or business contacts and involving no substantial risk of undermining official impartiality.

(6) No person shall knowingly confer or offer or agree to confer any benefit prohibited by subsections (1) through (5).

(7) A person convicted of an offense under this section shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-105 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-105.

Title 49 HUMAN RIGHTS

Title 49, CHAPTER 2 , Part 1 Illegal Discrimination General Provisions

49-2-102. Records to be kept. The state, employers, labor organizations, and employment agencies shall maintain records on age, sex, and race that are required to administer the civil rights laws and regulations. These records are confidential and available only to federal and state personnel legally charged with administering civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race shall be made available to the general public.

History: En. 64-306.1 by Sec. 4, Ch. 524, L. 1975; amd. Sec. 1, Ch. 27, L. 1977; R.C.M. 1947, 64-306.1(2).

Title 61 MOTOR VEHICLES

Title 61, Chapter 7, Part 1 Accidents and Accident reports

61-7-114. Accident reports confidential. (1) All required accident reports and supplemental reports must be without prejudice to the individual reporting and must be for the confidential use of the department or other governmental agencies for accident prevention, roadway design, motor carrier safety monitoring purposes, or for the administration of the laws of this state relating to the deposit of security and proof of financial responsibility by persons driving or the owners of motor vehicles. The department may disclose the identity of a person involved in an accident when the identity is not otherwise known or when the person denies being present at the accident.

(2) Except as provided in this section, all accident reports and supplemental information filed as required by this part are confidential and not open to general public inspection. Copying of lists of reports is not permitted. The report and supplemental information filed by law enforcement personnel, as required by this part, may be examined and copied, without obtaining a court order, by:

- (a) a person named in the report or involved in the accident;
- (b) the representative of the person referred to in subsection (2)(a), designated in writing, or the insurance carrier of that person;
- (c) a party to a civil action arising from the accident; or
- (d) the executor, the administrator, or the attorney representing the executor or administrator if the person is deceased.

History: En. Sec. 14, Ch. 210, L. 1939; amd. Sec. 9, Ch. 256, L. 1959; amd. Sec. 1, Ch. 142, L. 1973; R.C.M. 1947, 32-1213; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 486, L. 1989; amd. Sec. 4, Ch. 105, L. 1997.

Appendix B-2 MDT Management Memos (policies)

<p>Montana Department of Transportation MANAGEMENT MEMO</p>	Management Memo Number: 00-02
	This Revision: 16 February 2000
	Last Revision: N/A

Subject: Employee Solicitation or Acceptance of Gifts or Gratuities

To: All Offices

From: Marvin Dye, Director

POLICY

This policy is intended to provide guidance to MDT employees in their relationships with private persons or businesses.

PROCEDURES

1. The language below is based on two sections of MCA, and may seem confusing. To help simplify the issue, it may be easier to adopt the motto "*don't take anything of value, from anybody, ever!*"
2. Department employees whose duties include the regulation, testing, inspection or investigation of any person, firm or corporation are not permitted to solicit or accept any gifts, items or gratuities having any pecuniary value from any entity (person, business, group, etc.) which is the subject of those duties.
3. Department employees whose duties include any discretionary function pertaining to contracts, purchases, payments, claims or other government transactions, are not permitted to solicit or accept any gifts, items or gratuities having any pecuniary value from any person, firm or corporation subject to the employee's duties.
4. Department employees whose duties are not addressed in paragraphs 1 or 2 of this policy are not permitted to solicit contributions from any person, firm or corporation with which the Department conducts business, except as provided in Policy #3-0185.
5. Department employees whose duties are not addressed in paragraphs 1 or 2 of this policy may not accept any gift or contribution from persons, firms or corporations which violates the Code of Ethics established in Title 2, chapter 2, part 1 of the Montana Code Annotated.
6. Employees who violate this policy are subject to the Department's discipline policy in addition to any other statutory provisions.

Appendix C - Course Completion Documentation

I hereby acknowledge that on this date I have completed the Montana Department of Transportation's Self-Study Course titled **ETHICAL STANDARDS**.

I understand that it is my duty to read and understand the laws and materials presented in the course. I am also aware that failure to comply with the standards set forth by Montana Law or MDT policy is cause for disciplinary action, up to and including termination and may result in prosecution if warranted.

Employee's printed name

Employee's signature

Date Social Security Number

Supervisor's signature

Date

The Montana Department of Transportation attempts to provide reasonable accommodations for any known disability that may interfere with a person participating in any service, program, or activity of the department. Alternative accessible formats of this document will be provided upon request. For further information, call 406-444-6331(V) or toll free at 800-335-7592 (T).